

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

ARTHUR B. CHERRY,

Petitioner,

v.

Case No. 08-12465-BC  
Honorable Thomas L. Ludington

NICK J. LUDWICK,

Respondent.

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**ORDER GRANTING PETITIONER'S MOTION TO EXPAND THE RECORD**

On June 10, 2008, Petitioner Arthur B. Cherry, through counsel, filed an application for writ of habeas corpus with this Court, pursuant to 28 U.S.C. § 2254. In his petition, he challenges his convictions for first-degree felony murder, Mich. Comp. Laws § 750.316; assault with intent to rob being armed, Mich. Comp. Laws § 750.89; and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b. He raises issues regarding due process, effective assistance of counsel, alleged entitlement to an evidentiary hearing, a jury instruction, and the prosecutor's remarks.

Before the Court now is Petitioner's motion to expand the record. The Court ordered Respondent to file an answer to the petition by December 15, 2008. For the reasons stated below, the Court will grant Petitioner's motion to expand the record.

Rule 7 (a) of the rules governing § 2254 cases, 28 U.S.C. foll. § 2254, indicates that if a habeas petition is not summarily dismissed, the district court judge "may direct the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition." A federal district court judge may employ a variety of measures to avoid the

necessity of an evidentiary hearing in a habeas case, including the direction to expand the record to include evidentiary materials that may resolve the factual dispute without the need for an evidentiary hearing. *Blackledge v. Allison*, 431 U.S. 63, 81-82 (1977).

In the present case, Petitioner requests the Court to expand the record to include an affidavit of Anthony Adams. On the basis of the above, the Court will permit the record to be expanded to include the affidavit.

Accordingly, it is **ORDERED** that Petitioner's motion to expand the record [dkt #3] is **GRANTED**. Petitioner shall file the affidavit of Anthony Adams, as attached to Petitioner's motion, on or before **July 25, 2008**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: July 10, 2008

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 10, 2008.

s/Tracy A. Jacobs  
TRACY A. JACOBS

